

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 01-0114
Responsible Officer-Bingo Penalty and Withholding Tax
For Tax Years 1999 through 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Withholding Tax— Responsible Officer Liability

Authority: IC 6-3-4-8; IC 6-8.1-5-1(b)

Taxpayer protests the assessment of responsible officer liability for withholding taxes.

STATEMENT OF FACTS

Taxpayer was the president of a not-for-profit organization. After an investigation, the Department of Revenue (the "Department") found that the not-for-profit organization had not withheld Indiana adjusted gross income tax and county adjusted gross income tax from wages paid to an employee who worked for the not-for-profit organization. Taxpayer was personally assessed for the taxes because she was listed as the president of the not-for-profit organization. Taxpayer protests this finding, and the subsequent assessment of withholding tax liability. Additional facts will be provided below.

Withholding Tax— Responsible Officer Liability

DISCUSSION

IC 6-3-4-8 provides in pertinent part:

(a) Except as provided in subsection (d), every employer making payments of wages and subject to tax under IC 6-3, regardless of the place where such payment is made, who is required under the provisions of the Internal Revenue Code to withhold, collect and pay over income tax on wages paid by such employer to such employee, shall at the time of the payment of such wages, deduct and retain therefrom the amount prescribed in

withholding instructions issued by the department. . . . Such employer making payments of any wages:

(1) shall be liable to the state of Indiana for the payment of the tax required to be deducted and withheld under this section and shall not be liable to any individual for the amount deducted from his wages and paid over in compliance or intended compliance with this section; and

(2) shall make return of and payment to the department monthly of the amount of tax which, under IC 6-3 and IC 6-3.5, he is required to withhold.

An individual is personally liable for unpaid withholding taxes if they are an officer, employee, or member of the employer who has a duty to remit the taxes to the Department. *See* IC 6-3-4-8(g). Subsection (d), referred to above, exempts employers for fraudulent acts by their employees; however, such circumstances were not alleged in the instant case. Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. *See* IC 6-8.1-5-1(b).

The assessment against taxpayer was based upon the best information available, and was derived from previous withholding payments made by the not-for-profit organization. Taxpayer protests her responsible officer assessment, and states that the employee for which withholding tax was withheld resigned in December of 1999. However, taxpayer has failed to provide any documentation supporting her allegation, despite numerous requests by this hearing officer for said documentation. Furthermore, taxpayer has failed to provide evidence to establish that she was not the responsible officer during the assessment periods.

FINDING

The taxpayer's protest is denied. Taxpayer (1) failed to provide evidence that the employee for which withholding tax was previously withheld was no longer an employee during the assessment periods; and (2) failed to provide evidence that she was not the responsible officer during the assessment periods.